

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 8329 of 2015 (O/M)
Date of decision : 8.12.2015

Roda Singh

..... Revisionist

Versus

Hardeep Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vijay Sharma, Advocate, for the revisionist.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
 2. To be referred to the Reporter or not.
 3. Whether the judgment should be reported in the digest ?
- .- -.-

KULDIP SINGH J. (ORAL)

Impugned in the present revision is the order dated 7.10.2015, passed by the learned Civil Judge (Junior Division), Patiala, vide which the application filed by the defendant for permission to examine himself after the examination of his witnesses, was allowed, while observing that at the time of cross examination of DW1, although the learned counsel for the plaintiff had raised the objection as per the provisions of Order 18 Rule 3-A of Code of Civil Procedure, 1908 (in short 'CPC'), but the said provisions are not mandatory, but directory in nature. Hence, the defendant was given opportunity to examine himself, so that the present case can be effectively adjudicated on merits.

CR No. 8329 of 2015 (O/M)

-2-

The plea of the learned counsel for the revisionist is that earlier the defendant examined his witness, but he did not examine himself, despite an objection raised by the learned counsel for the plaintiff that he should be examined first. Now, when all the witnesses of defendant have been examined, he wants to examine himself, which is in violation of mandate of Order 18 Rule 3-A CPC.

The reliance has also been placed on Full Bench judgment of this Court in The Amritsar Improvement Trust Versus Ishri Devi, 1979 CLJ (Civil) 246, wherein it was held that the provisions of Order 18 Rule 3-A CPC are directory in nature. However, the reliance has been placed on the following observation made by Full Bench of this Court in The Amritsar Improvement Trust (supra) :-

“12. Before parting with this judgment, however, a note of caution must be sounded. Holding that the aforesaid rule is directory and the permission may be granted at a later stage, is not to say that the mandate of the legislature in this context is to be easily disregarded or lightly deviated from. It is plain that as a normal rule the legislature requires the testimony of the party to be recorded first and the rationale there is not far to seek. Apparently in order to prevent an easy deviation from the rule, it has been laid down that the court shall record its reasons for doing so. It is to be hoped that the trial Courts in whom primarily the discretion has been vested, would keep both the letter and the spirit of the rule in

CR No. 8329 of 2015 (O/M)

-3-

mind before according permission thereunder in exceptional circumstances, and not whittle the same down by allowing too easy and indiscriminate deviation therefrom.”

The attention of this Court has also been drawn on the application filed by the defendant, wherein it is stated that in the interest of justice and equity, the defendant may kindly be allowed to examine himself at this stage. It is contended that no reasons have been given by the lower Court in allowing the examination of the defendant.

After considering the submissions of the learned counsel for the revisionist, I am of the view that the case is still at the stage of evidence of defendant. He has already examined some witnesses. The lower Court was of the view that the provisions of Order 18 Rule 3-A CPC are directory in nature and that his (defendant's) examination is necessary, so that the case may effectively be adjudicated on merits.

I am of the view that these are sufficient reasons. In the interim orders, the lower Court is not required to discuss the case law. Infact, by objecting to the examination of defendant, the plaintiff wants to ensure that defendant is not examined and in default of the examination of defendant, he is able to get a favourable decision. There can be no second opinion that the examination of a party is must in a civil case. Therefore, the simple reasoning given by the

CR No. 8329 of 2015 (O/M)

lower Court that his examination is necessary for effective adjudication on merits is the sufficient reasoning in the given circumstances. Infact, the disturbing trend has come forth, wherein the party files a revision against each and every order, passed by the lower Court, thereby burdening this Court with un-necessary litigation. Consequently, the present revision is dismissed.

(KULDIP SINGH)
JUDGE

8.12.2015
sjks